IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1347 OF 2005

Tata Finance Ltd. ..Petitioner

Vs.

M/s. Mikado Textile Indsutries Ltd. and Ors. ..Respondents

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Mr.D.M.Purandare i/b Kartikeya & Associates for Petitioner
M/s.Joseph &Associates for Respondent no.1
Mr.S.R.Shinde A.P.P. for State

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CORAM: SMT. V.K. TAHILRAMANI, J.
DATE OF RESERVING THE ORDER : 09.08.2005
DATE OF PRONOUNCING THE ORDER : 18.08.2005

P.C.

1. Heard the learned advocate for the petitioner i.e. original complainant and learned advocate for respondent no.1 original accused.

2. The petitioner is the original complainant in case relating to C.C.No.12/S/2002 (Old Case

No.1005/S/96). The complaint was filed by the complainant before the Court of the learned Metropolitan Magistrate, 37th Court, Esplanade, Mumbai. By order dated 4.9.2003, the learned Metropolitan Magistrate, 8th Court, Esplanade Mumbai passed the following order:

> "Complainant and the accused are absent. Case fixed for hearing. No reason to adjourn hearing. Hence, complaint dismissed for want of prosecution".

. The complainant on coming to know about this fact, preferred an application before the learned Metropolitan Magistrate, 8th Court, Esplanade, Mumbai for restoration of the complaint. The learned Magistrate by order dated 4.10.2004 restored the said complaint. Being aggrieved by the said order, the respondents i.e. original accused nos.1 to 3 preferred revision before the Sessions Court. By order dated 16.2.2005, the learned Additional Sessions Judge set aside the order of the learned Magistrate restoring the

complaint on the ground that the Magistrate did not have the power to restore the complaint. The said order has been impugned in the present petition.

3. It is well settled legal position that a Magistrate has no power to review or recall his own order or the order passed by his predecessor. The learned Magistrate has no inherent power and in the absence of any specific provision empowering the Magistrate to restore the complaint, the learned Magistrate could not have restored the complaint which was dismissed by him. In view of this, no fault can be found with the order of the learned Sessions Judge setting aside the order of the learned Magistrate.

4. However, from the facts of the present case, it is seen that the complaint was not dismissed for any fault on the part of the complainant hence, looking to the facts of this case, in my opinion, in the interest of justice the complaint needs to be restored.

5. The brief facts relating to the circumstances

in which the order of dismissal came to be passed are given below:

. Initially the complaint was presented before the 37th Court, Esplanade, Mumbai. However, thereafter, it came to be transferred to 23rd Court. Despite this fact, the matter did not at any time, go to 23rd Court and infact, it went to the 8th Court at Esplanade, Mumbai. Both the orders of the Court below i.e. order dated 4.10.2004 and order dated 16.2.2005 clearly reflect this set of facts. It is also an admitted fact that the matter did not at all go to 23rd Court but infact, it went to 8th Court, Esplanade, Mumbai. Obviously when the matter went to 8th Court, Esplanade, Mumbai, the petitioner i.e. the complainant did not have any knowledge that the proceedings were in the 8th Court. From the perusal of the Roznama, it is clear that on no date, the petitioner appeared before the 8th Court. As the matter was instituted before the 37th Court and it came to be transferred to 23rd Court, the petitioner/complainant would search for the matter in the 23rd Court and 37th Court. There was no way

for the complainant to know that the matter infact had gone to the 8th Court. It is in these circumstances that on 4.9.2003 the complainant did not remain present before 8th Court and hence, the order of dismissal came to be passed.

6. When the matter was transferred by 37th Court to 23rd Court, there was no reason for the matter to go to the 8th Court. In fact, as to how the matter went to 8th Court, is not known. Taking into consideration this aspect of the matter, it is clear that the order of dismissal has resulted in a serious miscarriage of justice and this Court in its inherent powers can pass orders to secure the ends of justice.

7. Thus, though in my view no fault can be found with the order of the learned Sessions Judge dismissing the revision of the petitioner, however, in view of the facts above in the interest of justice, the complaint deserves to be restored and is accordingly restored to file.

8. Parties to appear before the learned Magistrate

on 21.9.2005 i.e. before the Court of Metropolitan Magistrate, 23rd Court, Esplanade Mumbai.

9. At this stage, learned advcoate for respondent no.1 requested for stay of this order for a period of four weeks as the respondent wishes to challenge this order. In view of the request, this order is stayed for a period of four weeks.

[SMT.V.K.TAHILRAMANI,J.]